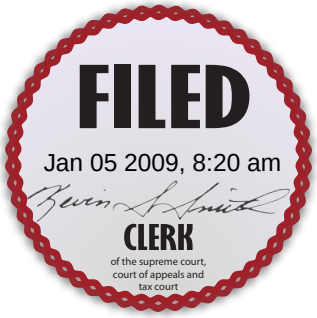


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# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| TIMOTHY J. COUGHLIN, | ) | |
| | ) | |
| Appellant - Respondent, | ) | |
| | ) | |
| vs. | ) | No. 49A02-0806-CV-515 |
| | ) | |
| RIGGS-ELLINGER, INC., d/b/a | ) | |
| THE WINNINGHAM INSURANCE GROUP | ) | |
| | ) | |
| Appellee - Petitioner. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable John F. Hanley, Judge
Cause No. 49D11-0503-PL-12242

**January 5, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Timothy Coughlin appeals a judgment in favor of Riggs-Ellinger, Inc. d/b/a The Winningham Insurance Group in the latter's action for breach of contract against Coughlin. Coughlin presents the following restated issue for review:

> Did the trial court err in ordering the breaching buyer to pay damages to the seller in the amount of the unpaid purchase price, where the seller reacquired the business through a bankruptcy sale?

We affirm.

The relevant undisputed facts are that Rob and Sandy Ellinger and Sandra Riggs owned Riggs-Ellinger, Inc. (Riggs-Ellinger), which in turn owned The Winningham Insurance Group, an Indianapolis insurance company. In November 2004, Riggs-Ellinger reached an agreement with Retirement Planners of America, Inc. (RPA), an Indiana corporation owned by Jerry Scott and Coughlin, for RPA to purchase The Winningham Insurance Group from Riggs-Ellinger. The terms of that agreement were reduced to writing in a document entitled "Asset Purchase Agreement" (the Purchase Agreement). Coughlin signed the Purchase Agreement as a shareholder and the CEO of RPA. He also signed a personal guarantee. The Purchase Agreement called for RPA to pay Riggs-Ellinger $900,000. $100,000 was due at closing. A second payment of $310,000 was due several weeks later, on December 19, 2004. A third payment of $100,000 was due during the first week of January, 2005. The remainder of the purchase price - $390,000 - was to be paid in monthly installments beginning in June 2005. The first two payments ($100,000 and $310,000) were made, but a dispute between the parties arose in January 2005, and no payments were made thereafter.

Sometime in 2005, Coughlin discovered that Scott had been embezzling money from RPA and committing other financial improprieties. Coughlin fired Scott from RPA in February 2006. Subsequent investigations led to the filing of multiple felony charges against Scott. Scott eventually pleaded guilty and was sentenced to three years incarceration and ordered to pay restitution to the victims.

On March 31, 2005, Riggs-Ellinger filed a complaint for damages naming as defendants Scott, RPA, and Coughlin. While his criminal case was winding its way through the courts, Scott filed for bankruptcy. In February 2006, RPA also filed for bankruptcy protection. Coughlin attempted to reopen the The Winningham Insurance Group in a Chapter 11 reorganization but was unable to do so. The Winningham Insurance Group was placed for sale at a bankruptcy auction and purchased by a third party. That third party, however, was unable to obtain financing, and Riggs-Ellinger subsequently purchased The Winningham Insurance Group. Although the record does not reflect the precise amount Riggs-Ellinger paid to purchase The Winningham Insurance Group, it was described as the amount of the third party's winning bid minus the amount Riggs-Ellinger would have received from the sale as a creditor of RPA. By September 6, 2005, Coughlin remained as the only defendant not protected by bankruptcy from Riggs-Ellinger's lawsuit. A bench trial was conducted on March 11, 2008. On March 19, 2008, the trial court rendered judgment in favor of Riggs-Ellinger, awarding it $490,000 for breach of the Purchase Agreement, plus court costs, attorney fees, and interest. Coughlin appeals this judgment.

In effect, the trial court awarded the amount of the unpaid purchase price to Riggs-

Ellinger as damages for RPA's breach of contract. Coughlin is personally liable on the strength of his personal guarantee of RPA's obligation under the Purchase Agreement. Coughlin contends the court erred in "entering judgment for the entire amount of the contract for the purchase of the business" in light of the fact that "Appellees were paid a substantial portion of the contract price and Appellees retook possession of the business." *Appellant's Brief* at 8. Coughlin contends he should prevail on appeal on the theory of unjust enrichment.

As Coughlin acknowledges, he did not present this argument (i.e., unjust enrichment) to the trial court. "Generally, a party waives appellate review of an argument if that party did not present that argument before the trial court." *City of Gary v. McCrady*, 851 N.E.2d 359, 364 (Ind. Ct. App. 2006). We note also that Coughlin does not explain why this argument should be exempt from waiver. Therefore, the argument is waived. Even on the merits, however, Coughlin's argument would fare no better.

This case was tried to the bench without benefit of a jury. In such cases, we "shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Ind. Trial Rule 52(A). Thus, we will neither reweigh the evidence nor re-assess witness credibility. *Bright v. Kuehl*, 650 N.E.2d 311 (Ind. Ct. App. 1995). We note that the trial court's judgment was not accompanied by findings and as such is a general judgment. We may affirm general judgments on any theory supported by the evidence introduced at trial. *Jack Eiser Sales Co., Inc. v. Wilson*, 752 N.E.2d 225 (Ind. Ct. App. 2001). When reviewing a general judgment,

we presume that the trial court correctly followed the law. *Bright v. Kuehl*, 650 N.E.2d 311. The presumption that the trial court correctly followed the law is one of the strongest presumptions applicable to our consideration of a case on appeal. *Id*.

In order to prevail on a claim for unjust enrichment, Coughlin would have needed to show that a measurable benefit was conferred upon Riggs-Ellinger under circumstances such that Riggs-Ellinger's retention of that benefit without payment would be unjust. *See Turner v. Freed*, 792 N.E.2d 947 (Ind. Ct. App. 2003). One concept inherent in the theory of unjust enrichment is that the benefit for which the plaintiff seeks recovery was expressly or impliedly requested by the defendant. *See Garage Doors of Indianapolis, Inc. v. Morton*, 682 N.E.2d 1296 (Ind. Ct. App. 1997), *trans. denied*; *Dedelow v. Rudd Equip. Corp.*, 469 N.E.2d 1206, 1209 (Ind. Ct. App. 1984) ("[u]njust enrichment comes within the purview of an action based on quasi contract or quantum meruit.[1] A party seeking to recover upon such a theory must demonstrate that a benefit was rendered to the other party at the express or implied request of such other party") (footnote supplied); *Indianapolis Raceway Park, Inc. v. Curtiss*, 179 Ind. App. 557, 386 N.E.2d 724 (1979); *cf. Wright v. Pennamped*, 657 N.E.2d 1223 (Ind. Ct. App. 1995), *clarified on denial of reh'g* (in order to recover under the theory of quasi-contract, a plaintiff is required to establish that the defendant impliedly or expressly requested that the benefit be conferred), *trans. denied.* In fact, we have gone so far as to state that "a party who has not expressly or impliedly requested the benefit is under no obligation

[1] Coughlin concedes that for purposes of his appeal, the equitable doctrine of unjust enrichment "is also referred to as quantum meruit, contract implied-in-law, constructive contract, or quasi-contract." *Appellant's Brief* at 10. Thus, for purposes of this appeal, we may treat these equitable doctrines as interchangeable.

to pay for the benefit." *Garage Doors of Indianapolis, Inc. v. Morton*, 682 N.E.2d at 1303.

In this case, Riggs-Ellinger's "benefit", as identified by Coughlin in support of his claim of unjust enrichment, is that Riggs-Ellinger gets to collect the full purchase price paid by Coughlin, Scott, and RPA, while at the same time getting to re-obtain The Winningham Insurance Group, perhaps at below-market price. Clearly, Riggs-Ellinger did not ask Scott and RPA to declare bankruptcy and thereby place The Winningham Insurance Group up for bankruptcy sale. The "benefit", if it can be characterized as such, was not requested by Riggs-Ellinger. Having not impliedly or expressly requested the "benefit", Riggs-Ellinger is not compelled to pay for it.

Finally, Coughlin correctly acknowledges that "if there is a contract controlling the rights of the parties, there can be no recovery under a theory of unjust enrichment." *Appellant's Brief* at 11 (citing *Engelbrecht v. Prop. Developers, Inc.*, 156 Ind. App. 354, 296 N.E.2d 798 (1973)). As we have explained:

> Quantum meruit is an equitable doctrine permitting recovery "where the circumstances are such that under the law of natural and immutable justice there should be recovery as though there has been a promise." [*Bayh v. Sonnenburg*, 573 N.E.2d 398, 408 (Ind. 1991), *cert. denied*]. Quantum meruit's origin predates the merger of the courts of chancery and law. Consequently, a contract precludes application of quantum meruit because (1) a contract provides a remedy at law and (2)--as a remnant of chancery procedure--a plaintiff may not pursue an equitable remedy when there is a remedy at law.

*King v. Terry*, 805 N.E.2d 397, 400 (Ind. Ct. App. 2004) (some citation to authority omitted). Clearly, in this case the rights of the parties involved in the sale of The Winningham Insurance Group were controlled by the Purchase Agreement. On this basis alone, the

equitable doctrine of unjust enrichment does not apply, as Coughlin's remedy would be at law, not in equity. *See Engelbrecht v. Prop. Developers, Inc.*, 156 Ind. App. 354, 296 N.E.2d 798. The trial court's determination that Riggs-Ellinger is entitled to the unpaid balance of the purchase price, as set out in the Purchase Agreement that was breached by Coughlin, Scott, and RPA, is not clearly erroneous.

Judgment affirmed.

MAY, J., and BRADFORD, J., concur